

Remarks/Arguments

Applicants have provided herein a Terminal Disclaimer to remove the obviousness-type double patenting rejection. Applicants have also provided arguments respectfully traversing the 35 U.S.C. §103(a) rejections. Ten (10) claims remain pending in the application: Claims 8-10, 12-14, and 21-24, of which Claims 8 and 24 are independent.

Applicants respectfully request reconsideration of the pending claims, in view of the comments below.

Double Patenting

The Examiner provisionally rejected Claims 8-10, 12-14 and 21-24 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-7 and 21-29 of copending Application Number 10/823,962. In the event the indicated claims of the referenced copending Application No. 10/823,962 should issue, Applicants have submitted herewith a Terminal Disclaimer which should overcome this provisional rejection.

Claim Rejections

The Examiner rejected Claims 8, 12-14, and 21-24 under 35 U.S.C. §103(a) as being unpatentable (obvious) over Huth (U.S. Patent No. 3,098,127) in view of Toht (U.S. Patent No. 2,930,856). The Examiner also rejected Claims 9-10 under 35 U.S.C. §103(a) as being unpatentable (obvious) over Huth ('127 patent) in view of Toht ('856 patent) and further in view of Flystad (U.S. Patent No. 3,396,245) or Groppe (U.S. Patent No. 5,086,464). Applicants respectfully traverse these rejections for the reasons set forth below.

Huth fails to teach a Behind The Ear Implantable Cochlear Stimulation system which includes the limitations as presented in independent Claims 8 and 24. On page 4 of the Office Action, the Examiner agrees with this assessment and states that, "Huth does not specifically teach that the hearing aid system is an implantable Cochlear Stimulation system."

But, to continue to use Huth ('127 patent) as a reference to reject Applicant's claims, the Examiner has also made the following statement, "providing a hearing system for an implantable Cochlear Stimulation system is known in the art." Without fully understanding what the Examiner means, Applicants take the position that the Examiner may be stating that "a hearing system" in the hearing aid as taught by Huth is the same or an arbitrary component of an Implantable Cochlear Stimulation (ICS) system. The "hearing system" in an ICS system is known in the art of Cochlear Stimulation Systems, but it is not the same "hearing system" that is used in the hearing aid as taught by Huth ('127 patent) or other conventional hearing aid devices. Applicants direct the Examiner to the Background of the Invention, starting on page 1, paragraph [003]:

"Implantable Cochlear Stimulation (ICS) systems are known in the art. Such systems are used to help the profoundly deaf (those whose middle and/or outer ear is dysfunctional, but whose auditory nerve remains intact) to hear. The sensation of hearing is achieved by directly exciting the auditory nerve with controlled impulses of electrical current, which impulses are generated as a function of perceived audio sounds. The audio sounds are picked up by a microphone carried externally (not implanted) by the deaf person and converted to electrical signals. The electrical signals, in turn, are processed and conditioned by a Wearable Signal Receiver and Processor (WP) in an appropriate manner, e.g., converted to a sequence of pulses of varying width and/or amplitude, and then transmitted to an implanted receiver circuit of the ICS system. The implanted receiver circuit generates electrical current as a function of the processed signal it receives from the WP (which in turn is based on the audio sounds picked up by the external microphone). The implanted receiver circuit is connected to an implantable electrode array that has been implanted into the cochlea of the inner ear. The electrical current generated by the implanted receiver circuit is applied to individual electrode pairs of the electrode array. It is this electrical current which directly stimulates the auditory nerve and provides the user with the sensation of hearing."

To further distinguish between an ICS system and a conventional hearing aid, or the hearing aid as taught by Huth ('127 patent), Applicants direct the Examiner to page 4, paragraph **[0011]**:

"It is an additional feature of the present invention, that when exercised in conjunction with an ICS system, there is no acoustic feedback from a microphone to affect performance. Conventional hearing aids use a speaker in the user's ear to broadcast an amplified acoustic signal to the user. If an ITE microphone was used in the same ear, the result would be severe acoustic feedback. The present invention is applied to ICS systems, wherein the output of the ICS system is electrical stimulation of the cochlea, not an acoustic signal."

Hence, it is respectfully submitted that Huth ('127 patent) alone or in combination with Toht ('856 patent), Flystad ('245 patent), or Groppe ('464 patent) do not teach, or suggest, Applicants' invention as presented in independent Claims 8 and 24 directed to an Implantable Cochlear Stimulation System. In view of the foregoing discussion, it is believed that the obviousness rejection should be overcome with respect to independent Claims 8 and 24.

Further, since Claims 9-10 and 12-14 are dependent claims that depend directly or indirectly from independent Claim 8, these claims should be allowable for this reason alone (although not necessarily the only reason).

Conclusion

In view of the above, it is respectfully submitted that Claims 8-10, 12-14 and 21-24 should be in condition for allowance. An indication of allowability with respect to these claims is earnestly solicited.

The Examiner is invited to telephone the undersigned, Victoria A. Poissant or Bryant R. Gold, at the telephones numbers indicated below should any issues remain after consideration and entry of this response, in order to permit early resolution of such issues.

Respectfully Submitted,

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